IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.987 OF 2005

Annappa Appa Koli, since deceased
by his legal representaives ..Appellants

Versus

Ramchandra Dnanu Koli an Ors. ..Respondents

Mr.S.G.Deshmukh for appellants
Mr.R.V.More for respondents

CORAM : P.V.KAKADE, J.
DATE : 20TH SEPTEMBER, 2005.

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by Ad-hoc Addl. District Judge, Sangli dated 1st April 2005 allowing the appeal and setting aside the order passed by Civil Judge, Junior Division, Kavathe-Mahakal dated 3rd

December,1996 decreeing the plaintiff’s suit.

2. I have heard the learned counsel for both the parties.Perused the record.

3. The plaintiff filed the suit for partition of the suit lands, possession and other consequential reliefs such as mesne profits. The plaintiff came with the case that the suit land originally bearing Survey No.226, admeasuring 32 Acre 38 gunthas was divided into revision Survey No.226/1 and 226/2, which was finally allotted Gat Nos.516 to 518A. According to the plaintiff the suit land was granted to plaintiffs and defendants predecessors in title as a gift land being a Government servant. It was originally belonged to Sangli Government. It is in the use of as a Government servant by the parties,since their predecessors in title. The plaintiff after giving the genealogy contended that the plaintiff’s son of Appa and defendant No.1 is son of Dnyanu, Defendant nos.2 and 3 are the sons of Maruti,who was the son of Kundalika. The Kundalika’s another son was adopted by another family. The plaintiff and the defendants were working under the erstwhile State of Sangli. Dharmappa was the elder

brother. Therefore, his heirs name were recorded in the record of right on 18.12.1982, as per the Government Resolution No.1520, the name of Dnyanu Tuka Koli was recorded. However, prior to him the name of Parasu Kushaba Koli came on record. Previously the suit land was unfit for the partition and therefore, it was jointly managed by the plaintiff and the defendants. However,on record only name of Dharmanna Sanappa Koli was recorded. The plaintiff, defendant nos.1 and 2 has 1/3rd share each and as such, when it was denied by the defendants the suit came to be filed. The defendants contented the suit, inter alia, denying all the allegations made by the plaintiff with submission that the genealogy is not correct and the plaintiff has no concerned to suit property. According to them the amount of regrant was paid the defendant Nos.4 and 5 as well as 4 to 6 on 13.1.1984 and 10.3.1984 with permission had purchased suit land and they had bonafide purchaser of the value without notice and on such and other grounds the suit sought to be dismissed.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiff has proved his case and it was held that the plaintiff

had 1/3rd share in the suit land and was entitled to the partition by metes and bounds and decreed the suit. The Appeal was carried to the District Judge, Sangli. The learned Addl.District Judge after hearing both the parties and on the basis of available evidence came to the conclusion that the reasoning adopted and findings recorded by the trial court were erroneous and therefore, order passing the decree was set aside and appeal was allowed and suit came to be dismissed. Hence the present appeal.

4. At the outset, it must be noted that there is absolutely no substantial question of law involved in this appeal at all. The only question sought to be adjudicated on behalf of the appellant is with regard to the authenticity of the genealogy given by the plaintiff. The lower appellate court has come to the conclusion that the plaintiff has failed to prove that the genealogy is true and correct. The appellate court has given the cogent reasons to discard the evidence regarding the genealogy, which in my considered view, has to be accepted. It is to be noted that though the witness Nagappa produced on record Xerox copy of the note book maintained, wherein genealogy was written, he

did not produce the original note book from which the Xerox copy was alleged to have been taken by him. In fact record shows that the original note book is in his custody maintained by him, he took the copy of the said original note book and what was produced before the court was the Xerox copy of the copy of the said note book, therefore, the learned lower appellate court judge, in my view, has rightly discarded the evidence to be not genuine and sufficient to rely upon, especially when there is no explanation coming forth on record as to why the original note book is not produced though it is in custody of witness Nagappa.

5. The learned counsel for the appellant brought to my notice a fact that in the course of pendency of the appeal before the lower appellate court, he had made an application Exh.39 under Order 41 Rule 27 in order to produce record of right in respect of Survey No.226 which showed joint nature of the entire family of Koli’s but on the said application the lower appellate court passed an order "other side to say". However, it is obvious that no further cognisance was taken on the said application, and therefore, it remained to be determined one way or the other. On this factual aspect, it is

submitted that the matter should be remanded to the lower court to determine the rights of the parties. In this regard I thought it fit to peruse the said document, which was made available by the appellant for my perusal. The document itself shows that it is neither dated nor gives any indication as to under which provision the Register is maintained under the Maharashtra Land Revenue Code. At any rate, the said document appears to be undated extract of record of right and therefore, I am satisfied that merits would not have turned on the said document, even if it was read in evidence by the lower court, therefore, I am not inclined to remand the matter only on that aspect.

6. Once this position is clear, then the reasoning adopted by the lower appellate court while dismissing the suit appears to be cogent, especially when he has taken into account all the aspects of the evidence on record appreciating in proper perspective. In para 16 of his judgment he has also referred to the factual evidence on record holding that the so-called admissions given by the witnesses were not actually the admissions in favour of the plaintiff and therefore, those were of no avail for the plaintiff’s cause. Be as it may, the

fact remains that the lower appellate court has appreciated the evidence in proper manner. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. In view of this position and remaining facts and circumstances, I am inclined to hold that there is no merit in the appeal and as such it stands dismissed with no order as to costs.

. Consequently Civil Application No.1521 of 2005 also stands dismissed with no order as to costs.